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8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. S-354

12 APRIL DAWN SACCA-JUUL
6633 N. Laureen
13 Fresno, CA 93710

STATEMENT OF ISSUES

14 Applicant/Respondent.
15

16 Complainant alleges:

17 PARTIES

18 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her
19 official capacity as the Executive Officer of the Respiratory Care Board of California, Department
20 of Consumer Affairs.

21 2. On or about June 20, 2005, the Respiratory Care Board of California
22 (Board) received an application for a Respiratory Care Practitioner License from April Dawn
23 Sacca-Juul (Respondent). On or about May 20, 2005, April Dawn Sacca-Juul certified under
24 penalty of perjury to the truthfulness of all statements, answers, and representations in the
25 application. The Board denied the application on October 19, 2005.

26 JURISDICTION

27 3. This Statement of Issues is brought before the Respiratory Care Board,
28 Department of Consumer Affairs, under the authority of the following laws. All section references are

1 to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: "The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
4 the Respiratory Care Practice Act]."

5 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and
6 revoke licenses to practice respiratory care as provided in this chapter."

7 6. Section 3732 of the Code states:

8 "(a) The board shall investigate an applicant for a license, before a license is
9 issued, in order to determine whether or not the applicant has in fact the qualifications
10 required by this chapter.

11 "(b) The board may deny an application, or may order the issuance of a
12 license with terms and conditions, for any of the causes specified in this chapter for
13 suspension or revocation of a license, including, but not limited to, those causes
14 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

15 7. Section 3750 of the Code states:

16 "The board may order the denial, suspension or revocation of, or the
17 imposition of probationary conditions upon, a license issued under this chapter, for
18 any of the following causes:

19 "(d) Conviction of a crime that substantially relates to the qualifications,
20 functions, or duties of a respiratory care practitioner. The record of conviction or a
21 certified copy thereof shall be conclusive evidence of the conviction.

22 "(g) Conviction of a violation of any of the provisions of this chapter or of
23 any provision of Division 2 (commencing with Section 500), or violating, or
24 attempting to violate, directly or indirectly, or assisting in or abetting the violation of,
25 or conspiring to violate any provision or term of this chapter or of any provision of
26 Division 2 (commencing with Section 500).

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11. Section 3753.7 of the Code states:

"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees."

12. Section 3753.1 of the Code states:

"(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction)

13. Respondent's application is subject to denial under sections 3732(a) and (b), 3750(d) and 3752 [substantially related conviction], CCR 1399.370(a) and (c) in that on or about January 26, 2005, Respondent was convicted by plea of guilty of violating Penal Code section 23152(a), driving under the influence of alcohol, a misdemeanor. The circumstances are as follows:

A. On or about May 28, 2004 at 1636 hours (4:36 p.m.), California Highway Patrol Officer J.J. Acosta was advised that a gray Toyota vehicle driven by a white female adult with dark hair was involved in a hit and run collision. He saw the vehicle driving northbound on SR-99 just north of North Avenue, and he stopped the vehicle. The driver identified herself as respondent but she did not have a California driver's license in her possession. Officer Acosta detected an odor of an alcoholic beverage on her person, and noticed that respondent's eyes appeared watery. He advised respondent of the reason he had stopped her. She denied involvement in a collision but recalled being forced off the freeway. He asked if she had anything (alcoholic) to drink that day, and respondent admitted that she drank two cocktails earlier. Respondent asked why Officer Acosta had stopped her, and he stated that he had received information that she was possibly involved in a hit and run collision. Officer A. Reyes arrived to assist. Officer Acosta directed respondent to perform various field sobriety tests (FST), explaining each

one and asking respondent to do each. At 1711 (5:11 p.m.), respondent performed a preliminary alcohol screening (P.A.S.) test. The results were .17%. She performed a second screening test at 1714 (5:14 p.m.). The results were .19%.

B. Based on respondent's unsatisfactory performance of the FSTs, her objective symptoms of intoxication, and the P.A.S. results, Officer Acosta determined that she was in violation of Vehicle Code section 23152(a), driving under the influence of alcohol and arrested her at approximately 1715 hours (5:15 p.m.). He conducted a search of respondent's right pants pocket and found a plastic baggy containing a small opaque plastic bottle with a temperature strip containing a clear fluid, a small brown bottle containing a grainy white material, and a small clear plastic tube containing a light brown material. He asked respondent about the items, and she replied that she used it to circumvent urine tests because she uses marijuana. Officer Acosta then advised respondent of Vehicle Code section 23136, the implied consent law and she chose a breath test. She was placed in the right front seat of the patrol vehicle.

C. While Officer Acosta was completing the arrest paperwork, respondent became upset and attempted to unbuckle herself from the seatbelt. From a seated position, she struggled in the car seat, lunged forward, and yelled obscenities at Officer Acosta. Based on her unruly behavior and the police car's location on a narrow shoulder of the highway during heavy commuting time traffic, Officer Acosta requested backup. Officer Reyes and Sergeant L. Sherman attempted to calm respondent by speaking with her, but she began yelling obscenities and racial slurs at them.

D. Officer Acosta transported respondent to the Fresno County Jail for a breath test. Respondent refused to cooperate. As Officer Acosta read the Chemical Test Refusal form to her, respondent became upset, began yelling, swung her legs at the officer, and kicked him. Officers Reyes and Acosta then placed respondent on the ground in a prone position to control her movements and stop the kicking. Sergeant Sherman advised Fresno County Sheriff's Deputies that they had a combative female in custody. Officers Acosta and Reyes assisted respondent up and walked her to the medical

1 screening window. Respondent continued to yell obscenities and personal insults. Officer
2 Acosta completed the booking process and recommended prosecution for violations of
3 Vehicle Code section 23152(a), driving under the influence of alcohol or drugs; Vehicle
4 Code section 23152(b), driving with a blood alcohol content of .08% or above; Penal Code
5 section 243(b), assaulting a peace officer and Penal Code section 148, delaying or resisting
6 a peace officer.

7 14. On or about July 7, 2004, a criminal complaint titled *People of the*
8 *State of California vs. April Dawn Sacca* was filed in Superior Court, Fresno County,
9 Central Division, Case Number 04914984-0. Count 1 charged respondent with a
10 misdemeanor violation of Vehicle Code section 23152(a), driving under the influence of
11 alcohol or drugs. As an enhancement, it was alleged that respondent in violation of Vehicle
12 Code section 23577, refused a police officer's request to submit to, and failed to complete,
13 chemical tests pursuant to Vehicle Code Section 23162. Count 2 charged respondent with a
14 misdemeanor violation of Penal Code section 148(a)(1), delaying or resisting a peace
15 officer. Count 3 charged respondent with a misdemeanor violation of Penal Code section
16 243(b), battery upon an officer and emergency personnel.

17 A. On or about January 26, 2005, respondent entered a plea of guilty to
18 Count 1, a misdemeanor violation of Vehicle Code section 23152(a), driving under the
19 influence of alcohol or drugs and admitted the enhancement charge, a violation of Vehicle
20 Code section 23577. The remaining counts were dismissed.

21 B. Judge John Vogt sentenced respondent to three years conditional
22 probation, thirty days in jail; all suspended except ten days. She was ordered to obey all
23 laws; attend Level 1 DUI school, pay a fine of \$1,498.00 and \$35.00; attend "Scared Stiff"
24 program on March 30, 2005; eight days jail to be done in the Adult Offender Work Program
25 in lieu of actual jail time. She was ordered to start by March 11, 2005 or report to jail on
26 that day. Her license was restricted to and from work, during work, to and from school, and
27 to and from a DUI school for ninety days. She was ordered to report to the Action Center.

28 15. Therefore, respondent's license is subject to discipline pursuant to

1 code sections 3732(a) and (b), 3750(d) and 3752 [substantially related conviction], CCR
2 1399.370(a) and (c) in that she was convicted of violating Penal Code section 23152(a),
3 driving under the influence of alcohol, a misdemeanor.

4 MATTERS IN AGGRAVATION

5 16. In a letter to the Board dated August 12, 2005, respondent admitted
6 that at the time of her arrest on May 28, 2004, she carried “supplements” to “detoxify her
7 system of marijuana.” She stated that she had recently begun a respiratory care practitioner
8 program and had smoked marijuana prior to beginning her program. She was concerned
9 that she would fail a drug test and so she “carried the materials used to defeat the tests.”

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters
12 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

13 1. Denying the application of April Dawn Sacca-Juul for a Respiratory
14 Care Practitioner License;

15 2. Directing April Dawn Sacca-Juul to pay to the Respiratory Care
16 Board of California the costs of the investigation and enforcement of this case, and if placed
17 on probation, the costs of probation monitoring;

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26 3. Taking such other and further action as deemed necessary and
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1 DATED: January 24, 2006

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Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant